

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**JEFFERSON P. SALMON dba
ELITE FREIGHT SYSTEMS,**

Respondent.

**Docket No. FMCSA-2009-0135¹
(Southern Service Center)**

ORDER APPOINTING ADMINISTRATIVE LAW JUDGE

1. Background

On March 5, 2009, the North Carolina Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Jefferson P. Salmon dba Elite Freight Systems, proposing a civil penalty of \$4,180 for two alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the Notice of Claim, which was based upon a February 6, 2009, compliance review (CR), charged Respondent with: (a) one violation of 49 CFR 382.305(b)(2), with a proposed civil penalty of \$3,360, for failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions; and (b) one violation of 49 CFR 395.8(k)(1), with a proposed civil penalty of \$820, for failing to preserve for six months a driver's record of duty status.²

On March 9, 2009, Respondent replied to the Notice of Claim, denying the violations and seeking binding arbitration. Regarding the random controlled substances testing charge, Respondent contended that the safety investigator provided it with

¹ The prior case number of this matter was NC-2009-0089-US0123.

² See Government Exhibit A to Field Administrator's Consent to Hearing. The Statement of Charges portion of the Notice of Claim was not included with the exhibit.

incorrect information concerning the testing cycles; it also argued that included in the number of driver positions were people who were operating for other companies.

Concerning the record of duty status charge, Respondent contended that the records are the driver's responsibility, and the Agency should focus on the driver, not the company.³

Respondent also surmised that "the driver may have been driving for another company at that time and [the] auditors probably got the records mixed up...."⁴

On May 20, 2009, Claimant, the Field Administrator for the Southern Service Center, FMCSA, pointed out that binding arbitration is available only to a respondent that admits having violated the regulations. Because Respondent denied the alleged violation, Claimant maintained that binding arbitration was not available to Respondent.

Nevertheless, Claimant believed the reply was, in essence, a request for a hearing, to which Claimant consented.

2. Discussion

Claimant is correct that because Respondent denied the violations, binding arbitration is not available to it.⁵ Claimant is also correct that a hearing should be held to resolve the issues in this matter. Therefore, pursuant to 49 CFR 386.16(b)(4)(C), the matter is referred to the U.S. Department of Transportation's Office of Hearings.⁶

³ 49 CFR 395.8(k)(1) requires "[e]ach motor carrier [to] maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt" (emphasis supplied); Respondent does not explain how this requirement is the responsibility of the driver.

⁴ See Government Exhibit B to Field Administrator's Consent to Hearing.


⁵ See *Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 69 Fed. Reg. 10288, March 4, 2004.

⁶ Two other matters involving carriers with different DOT numbers but located at the same address as Respondent are also being referred to hearing this day: *In the Matter of Elite Freight Systems, Inc.*, Docket No. FMCSA-2009-0132, and *In the Matter of Jeffrey*

3. Appointment of Administrative Law Judge

In accordance with 49 CFR 386.54, an administrative law judge is hereby appointed, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to preside over this matter and render a decision on all issues, including the civil penalty, if any, to be imposed. The proceeding shall be governed by subparts D and E of 49 CFR Part 386 of the Rules of Practice and all orders issued by the administrative law judge.

It Is So Ordered.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

5-27-09

Date

S. Salmon dba Elite Transportation, Docket No. FMCSA-2009-0134. The decision on whether these cases should be consolidated will be made by the Office of Hearings. (Note that although the Notice of Claim in Docket No. FMCSA-2009-0135 was sent to a different address than the Notices of Claim in the other two cases, the Agency's Safety and Fitness Electronic Records System (<http://www.saferys.org/>) lists the same address and telephone number for all three carriers.)

CERTIFICATE OF SERVICE

This is to certify that on this 28 day of May, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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The Honorable Ronnie A. Yoder
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FMCSA-2009-0135

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